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Otoe and Missouria Reservation lands

55TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 2198.

OTOE AND MISSOURIA RESERVATION LANDS.

FEBRUARY 20, 1899.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. ZENOR, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H. R. 12141.]

The Committee on Indian Affairs, to whom was referred the bills (S. 2801 and H. R. 4920) to provide for the revision and adjustment of the sales of the Otoe and Missouria Reservation lands in the States of Kansas and Nebraska and to confirm the titles under said sales, having had the same under careful consideration, beg leave to report the accompanying bill as an amendment in the nature of a substitute therefor, with a recommendation for the passage of the substitute.

Your committee submit as reasons therefor that said original Senate and House bills do not meet the approval of the Secretary of the Interior, and that the proposed substitute was referred to the Secretary of the Interior for his opinion and his response thereto was as follows:

DEPARTMENT OF THE INTERIOR,
Washington, January 28, 1899.

SIR: I have the honor to acknowledge receipt of your letter of the 26th instant, wherein you inclosed a draft of a bill "to provide for the revision and adjustment of the sales of the Otoe and Missouria Reservation lands, in the States of Kansas and Nebraska, and to confirm the titles under said sales," proposed as a substitute for S. 2801 and H. R. 4920, and asked for a report from this Department.

In response to your request you are advised that this Department fully appreciates the desirability of an early settlement of the long-standing controversy respecting these lands. If such a result can be obtained the best interests of the local community, the settlers, the Indians, and the General Government will be conserved.

I have considered the proposed bill and am fully convinced that its provisions are adapted to bring about an equitable adjustment of the entire matter. I therefore signify my approbation of the proposed bill and recommend that it be enacted into law.

The draft you inclosed is returned herewith.

Very respectfully, C. N. BLISS, *Secretary.*

The CHAIRMAN OF THE COMMITTEE ON INDIAN AFFAIRS,
House of Representatives.

Your committee, in support of their recommendation for this legislation, submit the following statement of facts and conclusions, includ-

ing the foregoing approval and recommendation of the Secretary of the Interior:

On March 15, 1854, a treaty was entered into between the United States and these Indians by which it was agreed on the part of the Indians to cede all of their lands west of the Missouri River in consideration of receiving a reservation in Kansas and Nebraska consisting of about 162,000 acres; the further consideration of a payment to them of the sum of $385,000, to be paid them in equal installments through a period of forty years; the further sum of $20,000 for expenses incident to locating on their reservation, and the further consideration of the erection by the United States of the usual reservation buildings—sawmill, gristmill, blacksmith shop, etc. (10 U. S. Stat. L., 1038). A letter from Hon. W. A. Jones, Commissioner of Indian Affairs, shows that all these requirements of this treaty stipulation have been faithfully met, and that the sum of $514,797.63 has been paid them. Afterwards, upon the application of the tribe, they were granted leave to move to the Indian Territory, where a new reservation was set apart for them as follows:

[Report from Commissioner of Indian Affairs of 1881, pages 271 and 272.]

DEPARTMENT OF THE INTERIOR,
Washington, June 25, 1881.

SIR: Agreeably to your recommendation of the 13th instant, the following-described lands in the Indian Territory west of the ninetieth degree west longitude, in the tract ceded to the United States by the Cherokees for the settlement of friendly Indians by the sixteenth article of their treaty of July 19, 1866, are hereby designated and assigned for the use and occupation of the confederated Otoe and Missouria tribes of Indians, under the provisions of the act of Congress approved March 3, 1881 (21 Stat., p. 381), namely:

Township 22 north, range 1 east, containing 23,013.70 acres.
Township 23 north, range 1 east, containing 23,018.79 acres.
Township 22 north, range 2 east, containing 23,049.27 acres.
Township 23 north, range 2 east, containing 22,945.91 acres.
Township 22 north, range 3 east, containing 22,986.69 acres.
Also that portion of township 23 north, range 3 east, lying west of the Arkansas River, containing 14,098.84 acres.
Total acreage, 129,113.20 acres.
The papers which accompanied your letter before noted are herewith returned.

Very respectfully,

S. K. KIRKWOOD, *Secretary.*

The COMMISSIONER OF INDIAN AFFAIRS.

By act of Congress August 15, 1876 (19 U. S. Stat. L., 208), provision was made for the sale of a portion of this reservation, consisting of about 120,000 acres. The consent of the Indians was given in open council December 23, 1876. The lands were appraised by three appraisers, one of whom was designated by the Indians. The appraised price averaged $3.75 per acre, which was considered a fair valuation, satisfactory to the Indians. The lands were open for entry and sale under the provisions of this act, and in each and every instance were sold to actual settlers at the appraised valuation. All questions arising out of the settlement of these lands were determined under the provisions of the preemption law.

By act of Congress March 3, 1881 (21 U. S. Stat. L., 380), provision was made for the sale of the remaining 42,000 acres of said reservation. The provisions of this act are essentially the same as those of the act of 1876. It is the land sold under provision of this act that an equitable adjudication of the sale thereof is sought by the provisions of the pending bill. The provisions of this act were approved by the Indians in open council May 4, 1881. The lands were appraised by three appraisers at an average of $6.42 per acre. F. M. Barnes was designated by the Indians as their member of the board of appraisers.

It was conceded by the Indians themselves that the appraisement was most satisfactory; they were delighted with it, and, after the manner of their race, they had a celebration with feasting and dancing.

By act of Congress March 3, 1885 (23 Stat. L., 371), the time of final payment was extended for two years; by act of Congress August 2, 1886 (24 Stat. L., 214), the time of final payment was further extended for the period of two years; by act of Congress March 3, 1893 (27 Stat. L., 586), the Secretary of the Interior was authorized and directed to revise and adjust on principles of equity the sales of lands in the reservation, the consent of the Indians having been first obtained. Nothing has been done under this act, the Department preferring a procedure as provided in the proposed amendment by way of substitute.

In the Fifty-fourth Congress a bill (H. R. 9146) was introduced, and was referred to the Committee on Indian Affairs. On June 5, 1896, Mr. Gamble, from this committee, submitted report No. 2237, which is a full and complete statement of the facts relating to the sale of these lands, as found by investigation of this present committee. The following extracts from the same are in point:

Under the act of August 15, 1876, authority was given for the sale of 120,000 acres of the reservation, and the same was sold. The essential provisions of that act are substantially as follows: With the consent of the Indians the lands were to be surveyed and afterwards appraised by three commissioners, one of whom was required to be designated by the Indians in open council. After survey and appraisement the lands were authorized to be sold for cash to actual settlers in tracts not exceeding 160 acres to each, at not less than the appraised value, and in no case less than $2.50 per acre; provided, however, that in the discretion of the Secretary of the Interior, the Indians consenting, they might be sold upon deferred payments, to wit, one-third cash, one-third in one year, and one-third in two years from the date of sale; proceeds to be placed to the credit of said Indians in the United States Treasury, with interest at the rate of 5 per cent per annum, to be expended for the benefit of said tribes under direction of the Secretary of the Interior. The sales to be made at the United States Land Office at Beatrice, Nebr., certified plats being there filed, and the sales to be conducted in all essential respects as public-land sales, subject only to the special limitations of the act as above described. These lands were so sold at the appraised value in each and every case.

In all cases of contest, and there were many, all questions as to actual settlement, etc., were determined by the general principles and the rules and regulations of the General Land Office governing cases arising under the preemption law. The settler purchasers, therefore, had to deal directly and only with the United States Land Office, which had exclusive jurisdiction under the Secretary of the Interior with the whole subject of the sale, settlement, payment, and procurement of patents for the same as if these lands had been public lands.

The act of 1881, under which the remainder of the reservation (about 42,000 acres) was sold, was in all its essential provisions a duplication of the act of 1876, under which the lands before described were sold. The Indians, in the latter as in the former case, designated an Indian, a member of the consolidated tribes, as one of the three commissioners to appraise the lands.

It is claimed that in both cases the appraisement was higher than these or similar adjacent lands could have been sold for for cash at the time. Indeed, that it was conceded by the Indians themselves that the appraisement was most satisfactory; that they were delighted with it, and that the universal judgment of local owners of and dealers in lands in that neighborhood was that the appraisement was too high.

One of those real estate speculative waves that sometimes sweep over the country reached Nebraska and Kansas about the time those lands were appraised, and when the sale finally occurred it was at flood tide. It did not last long, but it did not commence to recede until after the poor men who had been long waiting to secure homes on these lands, and who had made their selections and all their arrangements to locate thereupon, were caught and overwhelmed by it. At such a time, without due consideration, the rule governing sales which had obtained under the first act, and which had resulted so satisfactorily to the Indians and all others concerned, was set aside and they were ordered to be sold under the latter act at public sale to the highest bidder in each and every case. It was wholly unexpected by those who had made selections and were waiting to make their settlements and establish their homes upon these lands through individual dealing with the land office direct, as had been done under the first act and was plainly contemplated by the latter.

The act of 1876 was the first which provided for a sale of Indian reservation lands to actual settlers only and in limited quantities. It introduced a new departure with respect to these lands.

Not only do these acts in phraseology follow the general principles relating to the body of preemption laws, but attention is called to the fact that the general policy of the Government, more and more clearly defined in successive acts of legislation, has been to eliminate every feature permitting speculation in public lands, and in every way possible favoring the home seeker and home builder. * * * It is insisted that under the law and the general policy of the Government respecting public lands the reservation should have been disposed of at private instead of public sale, and that no authority existed for exposing the lands at competitive sale. This was the view taken by the then Commissioner of the General Land Office.

About the 1st of January, 1882, nearly ten months after the passage of the act, in answer to a letter from Hon. W. Ford, of the House of Representatives, the then Commissioner, referring to the proposed sale of these lands, said:

"They will be sold to actual settlers, etc. The price per acre is fixed by appraisement, but in no case can they be sold at less than $2.50 per acre. They will not be offered at public sale, but will be subject to entry through the United States public land office at Beatrice, Nebr."

Commenting on this statement, which was generally published in the newspapers throughout that part of Nebraska and Kansas in which these lands are located, a subsequent Commissioner says:

"The (then) Commissioner's statement, as above, tended to convey the impression that there would be no public sale, but that the price to be paid was that fixed by the appraisement. Moreover, the statute made the right of purchase depend upon settlement on the lands, thereby introducing the preemption principle in favor of settlers, which is understood to exclude the offering of tracts to the highest bidder. It would seem, therefore, that up to a short time before the date of sale the parties intending to become settlers upon the land had reason to suppose that if they could become settlers they would be exempt from the necessity of entering into competition with others for the purchase of the lands, and it would be reasonable to suppose that they made arrangements accordingly, supposing that the appraised value would be all they would have to pay."

In the total disregard not only of the spirit and letter of the law, but the official assurances to the Commissioner after the survey and appraisement of the lands had been completed, to the complete surprise of the intending settlers, the General Land Office issued an order for a public sale. Hon. Thomas H. Carter, Commissioner, comments as follows upon this action and the consequences flowing therefrom:

"In 1883 a public notice was issued under the direction of the Secretary of the Interior for the offering of said lands for sale at public auction, to begin on Thursday, the 31st day of May, 1883, at 10 o'clock a. m., at the district land office at Beatrice, Nebr. Although the act of March 3, 1881, did not prescribe that there should be competition at public auction for the acquisition of title to these lands, it was held to be within the discretion of the Secretary of the Interior, and he so directed. The offering was made accordingly, and the tracts were awarded to the highest bidders therefor, at prices greatly in excess of the appraised value, being in many instances more than double the amount thereof."

In addition to these facts it appears that when the lands were put up at public auction the sale was controlled by a mob of disorderly, intoxicated, and irresponsible persons; and the intending settlers seeking to secure lands of their selection, and on which they had previously made settlement in accordance with the spirit and purpose of the law, were brought into unfair competition and serious menace from the mob which had gathered for the purpose of speculation and making trouble, and not for the purpose of making actual settlement of the lands through bona fide purchase.

It also appears the Commissioner of the General Land Office was present at the sale, endeavored as best he could to protect the bona fide intending settlers, and assured them, in his official capacity, that no advantage would be taken of the excessive bidding, and that in the end the Government would make a fair and reasonable adjustment, and exact no more from the purchasers than the real and appraised value of said lands. The settlers relied upon these assurances, made the bids necessary to secure the lands, entered upon them, and have reduced them to a high state of cultivation. The community in which they reside is one of the best improved in southern Nebraska. Farms have been opened, schoolhouses, churches, villages, roads, and bridges have been built. The improvements alone constitute more than one-half the present value of the land.

A computation made by the Commissioner of the General Land Office on February 1, 1894, showed that the appraised value of the 42,261.54 acres sold at the last sale was $256,887.07, while the price at which they were bid off aggregates $516,851.52. There had at that date (February 1, 1894) been paid $322,075.70 principal, and

$28,253.51 interest, making a total of $350,329.21. There remained then due, upon the basis of the price at which the lands were bid, $194,775.82 principal, and interest thereon computed to February 1, 1894, $100,432.91, making a total of $295,208.73. At this time, therefore, there is due, in round numbers, about $320,000.

At the appraised value, however, there remained due on February 1, 1894, including all interest, less than $80,000.

Under the act of 1876, 120,000 acres of this reservation were sold to actual settlers at the appraised valuation, aggregating $462,262.73, or only $3.75 per acre. Those who are familiar with land values testify this was a fair price at the time, and entirely satisfactory to all parties in interest. The remaining 42,261 acres, sold under the act of 1881, only five years later, if closed out on the basis of the bids, exclusive of interest, will amount to nearly $15 per acre, or nearly four times as much as was realized per acre from the major part of the reservation.

It is not even contended that the quality of the lands comprised in the latter sale was better than that of the lands in the first sale. The lands, improved and enriched, not only by the labors of an industrious people during the years which have followed their settlement, but in many cases by the addition of the savings of a lifetime, will not sell for enough to pay the balance due on the basis of their bids.

From this simple statement it is apparent the settlers can not pay out. The burden is greater than they can bear. To insist upon such payment means, not a sale to honest settlers, but a confiscation of all these people have. It is not a payment to the Indians of their dues; it is a forced conveyance to them of the property of the whites, for which the Indians have given no equivalent. It means a wholesale eviction of this community from the homes they have built up.

In this connection attention is called to the fact that the settlers having, under the law, purchased and made the first payment in cash, been placed in peaceable and rightful possession, the remaining payments being deferred and bearing interest, have, under recognized and well-established principles of law, a vested interest in the lands. It follows that their titles can not be summarily forfeited and an ouster enforced without process of law, but on the contrary their titles can be extinguished and they ousted of possession only by decree of a court of competent jurisdiction and sale under such decree. In other words, almost endless delay and litigation, involving enormous expense, loss, and suffering, would follow an attempt on the part of the Government to enforce the present claims made against the settlers.

Neither the Government, the Indians, nor the settlers can in the end profit by a course so drastic and unjustifiable.

No authority of law existed for the sale of any part of these lands at any price other than the appraised value. The bids in excess of such appraised value were simply void. The law in force at the time must govern the transaction. The settlers are bound by every burden which it imposes. They are, on the other hand, entitled to all the benefits it confers. The Government can not be a party to a despoiling of its own citizens. It should not plead in its justification the unauthorized action of its own officers. If the Government, acting for itself, can not take advantage of its own citizens, it is equally inequitable for it to undertake such course in the interest of the Indians and against its own citizens.

The Indians are entitled to the appraised value of their lands—an appraisement with which they were perfectly satisfied—together with interest on such appraised value to the time of payment. They are entitled, neither in law nor equity, to one cent more. This amount the settlers are ready and willing to pay. Simple justice requires the adjustment provided for by this bill.

From the Report of the Commissioner of Indian Affairs for 1883, at page 63 thereof, touching the sale of this land, it appears "the sale was conducted under the personal supervision of the Commissioner of the General Land Office," who was at that time Hon. Noah C. McFarland.

A large number of affidavits are on file with the committee from responsible men to this effect:

During the sale affiant heard said McFarland publicly announce that the said bidding was too high; that the Government did not want only the appraised price of the lands, and to all who were buying with the intention of making homes the Government would exact only the appraised price of these lands. Affiant further states that at the noon recess of the sale he talked personally with Mr. McFarland, and McFarland told him if he was desirous of purchasing a home on these lands to go ahead and bid it off at any price; that the Government would exact only the appraised price of the lands, as that was all they were worth. Affiant further says that he purchased a piece of said land and was influenced to do so wholly by the statement of said McFarland.

Another valuable piece of testimony which is on file with the committee is the resolution of the board of county supervisors of Gage County, Nebr., requesting action in this matter, to the end that patents for the land may issue so that taxes may be levied and collected on the same, and that part of the reservation in Nebraska which is in Gage County may bear its just proportion of the burdens of taxation.

It can not be urged that there has been any hardship or loss to the Indians from the delay of final settlement. Interest has been running until therefrom a large sum has accrued, charged upon a principal two or three times larger than the Indians agreed to take for their lands. Meanwhile they have acquired another reservation, even more valuable, far more beneficial to them, and better adapted to their needs. Moreover, it has greatly increased in value since they secured it. The confederated tribes now contain, as we are informed, only 67 heads of families, and are relatively much richer than these settlers.

It would outrage every known principle of equity to ignore the wrong and injustice of the public sale and the proceedings thereunder; to overlook the fact that by their own agreement, intelligently made, and the consensus of all having an intimate knowledge of land values in that county at the time of appraisement and when the sale was made, the Indians would have received the full, fair value for the lands if they had been sold at their own appraisement.

There are other considerations which the Government for itself and its wards may wisely take account of. Nothing short of an amicable adjustment can rid its executive, legislative, and judicial branches of this controversy.

It is in the line of economy and to the best interests of all concerned to so legislate in this matter that a procedure may be authorized to bring all the issues involved in this case to a speedy termination; to take the testimony by aid of attorneys, thereby to test the knowledge of the witnesses and have the opportunity of cross-examination. Then to take that record, with the assistance of legal argument, and have the Secretary of the Interior make a finding and an adjudication thereon based on the principles of equity and good conscience as determined from all the facts. This is following the due course of administering justice on the American plan.

It should be remembered that this adjustment is not a matter between the settlers and the Indians, but between the settlers and the Government. These lands were purchased from the Government, and the Government has unquestioned power through Congress to extend this relief.

The object of the proposed bill is to give the Secretary of the Interior a form of judicial power to settle these controversies, so that he may act advisedly; that testimony may be taken, and a competent attorney may be appointed by the Secretary to appear and look after all the interests of the Indians in the hearings, and to present their case on that testimony and any other competent to the issue. The General Government owes a duty to these Indians, to the community where the land is situated, and to the settlers to adjudicate this matter in accordance with the rule of right. We believe that the proceedings authorized by this bill will bring about that result.

In view of the foregoing facts, supported by the favorable report of the Secretary of the Interior, your committee recommend the passage of the substitute bill in lieu of said Senate and House bills.